



**Republic v Munjalu (Criminal Case 40 of 2017)
[2023] KEHC 3617 (KLR) (2 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 40 OF 2017**

MM KASANGO, J

MAY 2, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

EDWARD MOI MUNJALU ACCUSED

JUDGMENT

1. Edward Moi Munjalu, the accused hereof, was on September 6, 2012 charged with the offence of murder of William Kimani Mwangi (deceased). At the material time of the offence, the accused was a serving Police Officer. He was a Police Constable. He stated while offering his defence in this case that he had been in police service for 20 years.
2. The prosecution's case is that the deceased alongside his friend George Njuguna (George) had a disagreement with the accused and his companion Paul at a night Club known as 'U' Turn (Bar & Restaurant) at Limuru town. That disagreement disintegrated into a fight which only stopped when the Club's bouncer ejected out of the club the accused and Paul. The deceased left the Club and ongoing into his car, prosecution contends that the accused severely shot the deceased while the deceased was seated at the driver's seat. The deceased died from his injuries.
3. The defence offered by the accused was that he indeed was at the Club. On arrival he found therein the deceased and George who were familiar to him. He also confirmed Paul arrived a while later. Paul was in the company of a lady. At some time in the course of the evening, he excused himself to go to the wash-room. On his return into the Club he found a commotion. That the fight was between George and Paul. Accused said he joined the bouncer in trying to stop the fighting. The fight was stopped but the accused found he was injured on the side of his forehead by a metallic edge of a chair. After receiving first-aid for his injury, administered by the bouncer, the accused left the Club and went to his house at Tigoni Police Station.



4. The accused is charged with having committed the offence of murder contrary to Section 203 as read with section 204 of the [Penal Code](#). section 203 provides:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

5. The above definition of the offence of murder gives rise to three ingredients of that offence. They are:

- (i) The fact and cause of death;
- (ii) Proof that the deceased met his death as a result of an unlawful act or omission of the accused; and
- (iii) Proof the said unlawful act or omission was committed with malice aforethought.

6. The fact of and cause of death of the deceased was proved by police officers who attended the scene of shooting of the deceased; the deceased’s Uncle Johnson Kimani Mwangi, who identified deceased’s body to the Pathologist; and finally, it was confirmed by Dr. Peter Muriuki Ndegwa, the Pathologist. The Pathologist presented the postmortem report which revealed deceased was shot seven times and that deceased died due to multiple organ injuries due to multiple gunshots at very close range.

7. According to the prosecution’s evidence, George had known the deceased for some years. On the night in question, George and the deceased were at the Club. The deceased ordered for chicken which they both had for dinner. Thereafter they continued taking alcohol as well as watching football on the television. At 3.00am George said he ordered four drinks, two guinness for him and two beers for deceased. While they were drinking, the accused arrived in the company of Paul and sat close-by to George and the deceased who were seated at the counter of the bar in the Club.

8. According to George, a man who is identified by the waitress and the Club Manager as Paul, was seated opposite him and deceased. Paul took George’s guinness and opened it by knocking it on the counter. George asked Paul to pay for it. Paul became angry held George by the collar and began to strangle him. A commotion ensued and other patrons began to try to separate them. George said the accused was part of the group. Agnes Karimi Ndumba, a waitress at the bar stated in evidence that the accused began to support Paul in that confrontation. The prosecution’s witnesses stated that on that confrontation escalating into a fight the bouncer sent both the accused and Paul out of the Club. George confirms that the bouncer asked him to step outside and resolve the dispute with Paul. It is not clear whether George did go as requested but there is evidence that the accused had been injured, in that melee on his forehead. This is what George stated:

“So I went out to try to settle it. I noticed the accused was bleeding from the forehead. William (the deceased) was at the counter. The bouncer came and told me that it might be wise for me to leave.

As I rushed out I heard the other guy (Paul), who had strangled me on the phone calling back up saying ‘Mkuje na Mkuje Mkiwa Wengi’”.

9. Agnes the Waitress said that after the initial commotion accused and Paul were sent out of the Club by the bouncer. On their being allowed to return to the Club, Paul started to provoke George and as a consequence Paul and accused were again sent out of the Club. Before they were sent out, Agnes heard accused say he knew the person who had hit him with a bottle on his forehead. Because of what Agnes was told by other customers, Agnes warned deceased not go out of the club because the police who



- were in that confrontation with him were outside the Club and were upset. Shortly thereafter, Agnes was informed deceased had been shot outside the club.
10. The commotion in the club and subsequent removal of accused and Paul was confirmed by Joan Wanjiru Mwangi a Waitress and George Maina Karuga the Club Manager.
 11. After the deceased was shot, a taxi driver who was outside the Club called Police Officers and reported the shooting. Insp. Paul Mwai stated that on Corp. Wesonga being telephoned and being informed of the shooting, the police went onto the scene. This witness stated the police found a large crowd, some surrounding the vehicle where the deceased was shot. Insp. Mwai said:

“When I went near the vehicle I noticed a man who seemed to be seated on driver’s seat leaning on the seat – and on close observation I noticed he had a gunshot wound on the forehead and blood was coming from the wound.”
 12. Also present at the scene were Deputy OCPD Limuru, Mr. Mwenda, the then DCI of Limuru and Chief Inspector of Langata, and the then OCS of Tigoni Police Station. Later, when officer Mwia returned to Tigoni Police Station and because he was in charge of armory, he was given by Mr. Mutungi, a Jericho Pistol Serial No.41310679, one magazine and 14 rounds of ammunition and three spent cartridges.
 13. This witness confirmed that P.C. Mwangi was on the scene earlier before the arrival of other police officers and he secured the scene. P.C. Mwangi was controlling the crowd at the scene.
 14. Corp. Duncan Mwangi on being informed of the shooting, went to the scene. On questioning those that were present and in particular George, he was informed deceased was shot by a Police Officer who had been drinking with Paul at the ‘U’ Club. This officer received four spent cartridges from Deputy OCPD Stanley Mutungi who told him that he received the bullets from the member of the public.
 15. The Crime Scene Officer, P.C. Caleb Simbili stated he had 10 years’ experience as a Crime Scene Officer. Although he started by stating he attended the scene on August 17, 2017, he later stated the correct date was 27th August. He alluded to someone having tampered with his written report by changing the date of visiting the scene as 17th August whereas he attended the scene on 27th August. He confirmed having taken 21 photographs at the scene. Those photographs reveal, amongst other things, the smashed rear wind-screen of deceased’s car, the general view of the vehicle, the deceased’s body and one spent cartridge which was on the floor on the right side towards driver’s door. The spent cartridge was handed to the Investigating Officer (I.O).
 16. The Investigating Officer confirmed she received the pistol, magazine holding 14 bullets from the armory and 4 spent cartridges from P.C. Mwangi.
 17. Insp. Hassan Diti testified and produced an Arms Movement Register showing that the pistol Serial No.41310679 was issued by him to the accused on August 15, 2017 with 15 rounds of ammunition. He confirmed accused signed for that firearm.
 18. The accused was arrested in his house within the Tigoni Police Station by Insp. Sebastian Mareria amongst officers and the pistol and magazine with 14 rounds of ammunition were recovered, by that officer, under the accused’s pillow.
 19. Assistant Superintendent Florence Karimi, a Ballistic/Firearm Analyst tested three rounds of ammunition and confirmed by comparative microscopic examination of the spent cartridges and the ones this officer tested fired had sufficient matching ejector marking and sufficient matching breech face marking. The officer therefore formed the opinion that the spent cartridges found at the scene



- and those the officer tested fired were fired from the pistol recovered, and which had been issued to the accused.
20. In his defence, accused stated that on the night in question and on arriving at 'U' Turn bar, he was "screened" by the bouncer and he was confirmed by the bouncer who was in the company of the club manager, that he did not have on him miraa, alcoholic drink nor weapon. He stated when a commotion commenced between Paul and George, he was in the washroom. On him coming from the washroom, he tried to separate them and in that process was injured on his forehead by an edge of a chair. Thereafter, he said he left the club because he had taken enough alcohol and went to his house at Tigoni police station. That as he slept, he began to choke, from the effects of tear gas that had been thrown to his house. On getting out of his house he was arrested and at first, he did not know the reason for his arrest. He was later informed while at the station cell that he was arrested for a shooting incident in Limuru. He did not deny the subject pistol and 14 rounds of ammunition were recovered from him.
 21. I have considered the lengthy and convoluted written submissions filed by the accused and I have also considered the written submissions of the State and the victim's lawyer.
 22. The accused has highlighted what he terms as contradiction of the prosecution's evidence. On the evidence of the waitresses of George and the club manager there is in my view minor and non-consequential variances on the happenings on the night in question. All witnesses and accused give an impression of a club that had many revelers in attendance. The lighting was dim. There was very noisy music being played. All that in my view may contribute to different recollection of exactly what happened and in what sequence. For example, George talked of accused and Paul being removed from the club once and he mentioned one incident of commotion. Agnes the waitress talked of two incidents of commotions and of Paul and the accused being removed from the club twice.
 23. What however all the witnesses for the prosecution confirm is that Paul and George were engaged in a confrontation and they allude to the accused getting involved in support of Paul. Consequently, the bouncer sent the accused and Paul out of the club. George and Agnes also confirm of threats being made by either Paul (whom they thought was a police officer) and the accused (whom they knew was a police officer). The threats were alarming enough to lead Agnes to warn deceased not to get out of the club and it was also the reason for the bouncer to request George to leave the club.
 24. The uncontroverted evidence adduced on behalf of the prosecution is that, the deceased on leaving the club and entering his vehicle, after the commotion, and while his vehicle was in motion, reversing out of the parking he was shot severally.
 25. The scene, following that shooting was secured by a police officer called Mwangi and was secured until the crime scene officer arrived and photographed the scene. There was a spent cartridge noted and photographed by the crime scene officer which was inside deceased's car.
 26. Insp. Paul Mwai confirmed he received three spent cartridges from Deputy OCPD Mutungi. Later, Cpl. Duncan Mwangi stated Senior Officer handed him four spent cartridges from the scene. Indeed, as highlighted by accused, there is no clarity on whether the one spent cartridge photographed by crime scene officer was part of the spent cartridges handed to I.O. What is however uncontradicted is at least three spent cartridges were handed over by Deputy OCPD Mutungi to Duncan Mwangi. Those spent cartridges were found at the scene of crime. Those spent cartridges, which includes the one photographed by the crime scene officer, were all confirmed to have been fired using the accused's pistol. The failure to give the number of spent cartridges recovered consistently by the witnesses was considered by the Court of Appeal in the case of *Dickson Mwangi Munene & Another v*



Republic[2014] eKLR. The Court of Appeal in that case was confronted with situation as I find myself, in this case and the court made the following holding:-

“The Arms Movement Book shows that the 1st appellant was issued with 13 rounds of ammunition. PW7 testified that the 1st appellant surrendered 11 rounds of ammunition and 2 empty cartridges were recovered from the scene. The ballistic examiner testified that out of the 11 rounds of live ammunition submitted to their lab, he tested 4. That would have left 7 rounds of live ammunition but in court that witness is recorded as having produced 11 rounds of live ammunition. If we go by the testimony of the pathologist who found that 3 shots were fired at the deceased, only 6 rounds of live ammunition should have been produced in court.

Although we agree with counsel for the 1st appellant that these figures do not add up, that does not change our above finding that it is the 1st appellant’s gun that fired the fatal shots at the deceased. ...

From all these pieces of evidence, we are satisfied that there is a mistake on the number of the rounds of ammunition in this case but as we have said this does not change our position that the deceased was killed by the gun the 1st appellant had at the scene.”

27. I too make finding, in this case that notwithstanding the mistake in numbering of spent cartridges I am satisfied that it was the pistol issued to the accused that shot the deceased on the night in question and the spent cartridges at the crime scene were fired using the pistol issued to the accused.
28. The fact the magazine recovered from the accused which he had been issued with had 15 round of ammunitions and that the doctor determined the deceased was shot seven times is well explained by the evidence of the I.O. The I.O. stated that it was not unusual for police officers to have access to extra bullet, more than what is officially issued to them. In that regard the I.O. stated:

“He might have extra ammunition.”
29. Although accused alleged he was screened by the bouncer before being allowed to enter the club and he stated his screening was in the presence of the club manager, I am afraid that is not supported by the evidence of that manager. That manager, who testified at the trial on being asked stated he did not see fire arm on the accused. No question was put to that witness on whether accused was screened before entering the club, in his presence.
30. The accused was of the view that a vital witness, the Deputy OCPD Mutungi was not called and that because he was not called the prosecution’s case should be considered adversely and the benefit of doubt be given to the accused. Accused relied on the case *Bukenya & Others v Uganda*[1972] EA 549.
31. In my view, prosecution’s case does not fail for lack of that evidence. There was clear evidence of the handing over of the spent ammunition by Deputy OCPD Mutungi who obtained them at the scene from the crowd who gathered there. This officer obtained three spent ammunitions and one was recovered from deceased’s vehicle by crime scene officer.
32. The inconsistencies of the happening and the sequences thereof at the club were insignificant and do not lead to a finding the prosecution case must fail. In this regard, I rely on the Court of Appeal holding in the case *Richard Munene v Republic* [2018] eKLR as follows:

“We begin with the submissions that the prosecution evidence was contradictory. In a criminal trial, the accused person enjoys a presumption of innocence because the burden



of proving the charges is on the prosecution, and to do so beyond any reasonable doubt. Secondly in an adversarial system the purpose of evidentiary rules is to assist the court in establishing the truth and in the process provide protection to the accused in respect to his right to a fair trial. As they say, the prosecution must present a watertight case that meets the threshold of beyond reasonable doubt in order to obtain a conviction. Contradictions, discrepancies and inconsistencies in evidence of a witness go to discredit that witness as being unreliable. Where contradictions, discrepancies and inconsistencies are proved, they must be resolved in favour of the accused.

It is a settled principle of law however, that it is not every trifling contradiction or inconsistency in the evidence of the prosecution witness that will be fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question and thus necessarily creates some doubt in the mind of the trial court that an accused person will be entitled to benefit from it.⁷

33. It ought to be noted that some inconsistencies simply go to show human frailty rather than showing a witness as being dishonest. This is what the Court of Appeal in the case of *Philip Nzaka Watu v Republic* [2016] eKLR stated:

“However, it must be remembered that when it comes to human recollection, no two witnesses recall exactly the same thing to the minutest detail. Some discrepancies must be expected because human recollection is not infallible and no two people perceive the same phenomena exactly the same way. Indeed as has been recognized in many decisions of this Court, some inconsistency in evidence may signify veracity and honesty, just as unusual uniformity may signal fabrication and coaching of witnesses. Ultimately, whether discrepancies in evidence render it believable or otherwise must turn on the circumstances of each case and the nature and extent of the discrepancies and inconsistencies in question.”

34. On my examination of the evidence tendered by prosecution, I find the same irresistibly points to the accused to the exclusion of all others as the one who pulled the trigger and fatally shot the deceased: See the case of *R. v Kipkering Arap Koske & Another* 16 EACA 135.
35. Similarly, I find and hold that the evidence of the prosecution displaces the alibi defence offered by the accused. The prosecution placed accused at the club and as being part-and parcel of the confrontation at the club which led to alarm being expressed of deceased’s safety in the club.
36. The accused made submission tending to suggest that the prosecution needed to meet a standard of proof higher than the law requires. The accused gave impression that prosecution should have met a standard of proof beyond any reasonable doubt. That is erroneous. In order to understand the standard of proof prosecution was required to meet, I rely on a persuasive decision of Canada, the case of *R v Lifchus* 1997 Can LII 319 (SCC) 1997 3SCR 320 as follows:

“... the standard of proof beyond a reasonable doubt is extricably intertwined with the presumption of innocence, the basic premise which is fundamental to all criminal trials, and that the burden of proof rests on the prosecution throughout the trial and never shifts to the accused. ... a reasonable doubt is not an imaginary or frivolous doubt, nor is it based upon sympathy or prejudice. A reasonable doubt is doubt based on reason and common sense which must logically be derived from the evidence or absence of evidence. While more is required than proof that the accused is probably guilty, a reasonable doubt does not involve



proof to an absolute certainty. Such a standard of proof is impossibly high. ... As well, the word “doubt” should not be qualified other than by way of the adjective “reasonable”.”

37. As stated before, I do hereby find prosecution proved that the deceased met his death as a result of the accused’s unlawful act of shooting.
38. The accused shot the deceased as he sat in his vehicle seven (7) times. That in my view clearly shows the accused had malice aforethought. The accused a serving police officer must have known that the act of shooting the deceased at very close range with seven bullets would result in his death. I am satisfied the prosecution’s evidence did establish malice aforethought as provided under section 206(b) of the [*Penal Code*](#).

Disposition

39. Consequently, I find and hold the prosecution proved a case beyond reasonable doubt that Edward Moi Munjalu murdered William Kimani Mwangi deceased. He is convicted as charged.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 2ND DAY OF MAY, 2023.

MARY KASANGO

JUDGE

In the presence of:

Accused Edward Moi Munjalu: Present

Mr. Munene Advocate for the accused:-present

Mr. Mbanya for the victim’s family:- Mr. Kariuki HB for Mr. Mbanya

Mr. Gacharia for the State:-Present

